* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 20th November, 2007

Crl.M.C.No.2906/2007

\# **R.L. VERMA & ORS.** .....Petitioners

! Through Mr. Sanjay Bahl, Advocates

versus

$ **J.K.VERMA & ORS.** ..... Respondents

^ Through Mr. Sanjeev Mahajan, Advocate for Respondent no. 1

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. Whether Reporters of local papers may be allowed to see the judgment?(No)
2. To be referred to the Reporter or not?(yes)
3. Whether the judgment should be reported in the digest?(yes)

JUDGMENT

P.K.BHASIN, J:

By this petition under Section 482 of the Code of Criminal Procedure, 1973, the petitioners have prayed for setting aside the order dated 29.03.2007 passed by the learned Metropolitan Magistrate in complaint case no. 669/2007 whereby the petitioners and respondents no. 2 and 3 were summoned for the offence under

Section 138 of The Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') and also for quashing the said complaint.

2. The Respondent no. 1-complainant filed a complaint case against M/s. Vasu Tech Ltd., respondent no. 2 herein and its Directors, who are the petitioners no. 1 & 2 as well as respondent no. 3 herein, under Section 138 of the Act. It is alleged by the complainant-respondent no.1 in the complaint that he entered into an agreement to sell with petitioner no. 3 herein (which is an HUF firm of which petitioner no. 1 is the karta and which was arrayed as accused no. 5 in the complaint), in respect of one flat. However at the time of execution of the flat buyer agreement, that flat was on rent with some tenant. Accused no. 2-4 arrayed in the complaint, are all family members and accused no. 1 (M/s Vasu Tech Ltd.) and 5 were their family concerns. Accused no. 2 to 4 had requested the complainant that their family concern was in dire need of money for some technological development and urged the complainant not to claim rent amounting to Rs. 2,50,000/- per month for the said flat for the time being from the tenant and that request the complainant accepted. To secure the debt on account of rent due from the tenant, the accused Company, respondent no.2 herein, issued a post dated cheque for Rs. 35,00,000/-. However on presentation to the bank of the Company, the said cheque was dishonoured for the reason "insufficient funds". After serving statutory demand notice on the petitioners as well as respondents no. 2 & 3, the respondent no. 1 filed a criminal complaint in Court in respect of the said

dishonoured cheque. The learned Metropolitan Magistrate took cognizance for the offence under Section 138 of the Act and vide his order dated 29.03.2007 summoned the petitioners herein as well as respondents no. 2 and 3 as accused. Feeling aggrieved, the petitioners have filed this petition.

3. The learned counsel for the petitioners submitted that since petitioners no. 1 & 2 are neither the signatories of the agreement to sell between the complainant and petitioner no. 3(HUF) nor have they signed the dishonoured cheque and since the so called understanding regarding the rent payment arrived at between the complainant-respondent no. 1 and respondent no. 2, the accused Company, was without their consent or knowledge and the cheque in dispute was also issued by respondent no.2-Company without their consent, they are not liable for the dishonour of the cheque as Directors of the said Company. It was further contended that the complaint does not contain specific averments from which it could be inferred that the petitioners were in any way in-charge of and managing day to day affairs of the Company, namely, M/s. Vasu Tech Ltd. and, therefore, they could not have been summoned as accused in respect of the offence allegedly committed by the said Company. In support of the said contention the learned counsel for the petitioners has placed reliance upon the judgments of the Apex Court in "***K. Srikanth Singh v. M/s North East Securities Ltd. & Anr." JT 2007(9) SCC 449*** and "***Saroj Kumar Poddar v. State & Anr." 2007 (2) SCALE 36.*** Further reliance has been placed on some judgments of this Court also which are reported as in

"*J.N. Bhatia & Ors. v. State & Anr." 139(2007) DLT 361, "Everest Advertising Pvt. Ltd. v. State & Ors." 124 (2005) DLT 353,* and "*Rachna Kapoor v. State & Ors." 121(2005) DLT 431.* As far as petitioner no. 3 is concerned, learned counsel argued that against this petitioner, which is an HUF, there is no averment at all in the complaint as to how it could be prosecuted for the dishonouring of the cheque issued by the accused Company, respondent no. 2 herein, and consequently the complaint qua this petitioner also deserves to be quashed.

4. Per contra, the learned counsel for the respondent no. 1-complainant contended that there was no deficiency in the averments in the complaint regarding the liability of the petitioners no. 1 and 2 inasmuch as in para no. 16 of the complaint it had been categorically pleaded by the complainant that these petitioners were in-charge and responsible for the affairs and business of the accused Company (respondent no. 2 herein) and that is what was required to be pleaded. In support he has placed reliance on the judgement of the Hon'ble Supreme Court in "*N. Rangachari v. Bharat Sanchar Nigam Ltd." AIR 2007 SC 1682.* Regarding the petitioner no.3 it was submitted that since the complainant had agreed not to claim rent from the tenant in the flat purchased by him from petitioner no. 3 on the joint request of all the petitioners and respondent no. 2 and 3, and the accused Company (respondent no. 2) and HUF (petitioner no. 3) being family concerns the petitioner no. 3 is also liable to be prosecuted.

5. Para no. 16 in the complaint contains the averments against the Directors of

the accused Company including petitioners no. 1 and 2 herein. That para is reproduced below:

> "That the accused no. 2 to 4 are the directors of the company and in charge of the accused no. 1 company and were responsible to the company for the conduct and business of the company as well as the company and are such liable for the dishonour of the above said cheque."

6. In the case relied upon by the learned counsel for respondent no.1-complaiant (A***IR 2007 SC 1682),*** the complainant had filed a complaint under Section 138 of the Act against a Company and its Directors and regarding the Directors the averments in the complaint were similar as have been made by the complainant in the present case in his complaint and which have already been reproduced above. In that case also the Directors had sought quashing of the complaint against them on the ground that they had nothing to do with the affairs of the Company and the averments in the complaint were not sufficient to make them liable for the offence under Section 138 of the Act with the aid of Section 141 of the Act. Hon'ble Supreme Court, however, rejected the said contention raised on behalf of the Directors of the accused Company by observing that if in the complaint it had been averred that the accused Directors were in-charge of and responsible to the accused Company, of which they were Directors, for the conduct of business then that would satisfy the requirement of Section 141 of the Act and nothing more was required to be pleaded in the complaint and further that it was not reasonable to expect the complainant to spell out in the complaint the exact

duties being performed by the Directors as those matters are within the knowledge of the Company and those in charge of it. Therefore, the complaint against the petitioners no. 1 & 2 in the present case cannot be quashed just because they have claimed that they had nothing to do with the affairs of the Company or the transaction with the complainant in respect of which their Company (respondent no. 2 herein) had issued the cheque in favour of the complainant which on presentment to the bank was dishonoured. The judgements of this Court relied upon by the learned counsel for the petitioners were all rendered before the pronouncement of decision in ***Rangachari's case*** (supra) and so cannot be of any benefit to the petitioners and in the two judgments of Hon'ble Supreme Court cited by him it was held that it has to be pleaded in the complaint under Section 138 of the Act that the accused Directors were in-charge of the affairs of the accused Company. In those two judgments it was not pleaded in the complaint that the concerned Directors of the accused Company were responsible for the day to day affairs of the Company which had issued the dishonoured cheques and so for that reason the complaints qua those Directors were quashed. However, as noticed already, in the present case the complainant had specifically pleaded in his complaint that petitioners no. 1 & 2 herein were the Directors of respondent no. 2 herein and were also responsible to the said Company for the conduct of the business of the Company. So, the two decisions of Hon'ble Supreme Court relied upon by the learned counsel for the petitioners also do not help the case of the

petitioners no. 1 & 2.

7. This petition qua petitioner no.3, however, is liable to be allowed because there is no basis laid down in the complaint for its prosecution for the offence under Section 138 of the Act. The only reason urged by the learned counsel for respondent no.1 in this regard, which has been noted already, is not sufficient to sustain the complaint against petitioner no.3 for the offence under Section 138 of the Act in respect of which only the complaint had been filed and learned Magistrate also took cognizance only for that offence.

8. In view of the foregoing, this petition with respect to petitioners no. 1 and 2 is dismissed but qua petitioner no. 3, M/s Rattan Lal Varma & Sons (HUF), this petition is allowed and the summoning order dated 29.03.2007 as well as the complaint qua the petitioner no. 3 stand quashed.

P.K.BHASIN,J

November 20, 2007
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